Number DA 10-0099

IN THE SUPREME COURT OF THE STATE OF MONTANA

IN THE MATTER OF THE ESTATE OF: WILLIAM F. BIG SPRING, JR., Deceased	)
JULIE BIG SPRING AND WILLIAM BIG SPRING, III, Appellants,	)
v.	)
ANGELA CONWAY, DOUG ECKERSON, and GEORGIA ECKERSON, Appellees.	)

BRIEF OF APPELLEE ANGELA CONWAY

On Appeal From
Montana Ninth Judicial District Court, Glacier County
Before the Honorable Laurie McKinnon

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TABLE OF CONTENTS

EXHIBITS

TABLE OF AUTHORITIES

STATEMENT OF ISSUE

Whether the Ninth Judicial State District Court, Glacier County, Montana, has subject matter jurisdiction over the probate of a Blackfeet tribal member's estate, where the only estate asset is fee land located within the exterior boundaries of the Blackfeet Indian Reservation and at least one heir is not a Blackfeet tribal member.

STATEMENT OF FACTS [1]

Appellee, Angela Christine Wyrick Conway ("Angela"), was born in 1982, *Attached Exhibit A, Descendent Form, 1 (March 6, 2006); CRR, Doc. 21, Affidavit of Lisa J. Wyrick, Attached Sworn Statement (Feb. 2, 2007).* Her father was William F. Big Spring, Jr. ("Bill"). *Attached Exhibit B, Genetic Test Report; CRR, Doc. 20, Affidavit of Angela Wyrick Conway ¶ 2 (Feb. 2, 2007).* This fact was commonly known in the community, but Angela's mom was not Bill's wife. *CRR, Doc. 21, Aff. Wyrick, Attached Sworn Statement.* Bill already had a family

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[1]References to the district court Case Register Report are denoted "*CRR, Doc. #, Title of Document, internal page reference, date.*"

References to the Appendix attached to this Brief are denoted: "*Attached Exhibit X, Title of Document, internal page reference, date.*"

when Angela was born. *Attached Exhibit C, Affidavit Georgia Eckerson ¶¶ 4-5 (Jan. 12, 2007).* He was married to Georgia Eckerson ("Georgia") and they had two children, William Big Spring III ("Willie") and Julie Big Spring ("Julie"). *Id.* Bill's other children, Willie and Julie, were about twelve and ten years old when Angela was born. The siblings never had a significant relationship. However, it is clear Georgia, Willie, and Julie were aware and acknowledged that Bill was Angela's father. *CRR, Doc. 20, Aff. Conway ¶ 9, referencing Exhibit E, ¶ 2 and Exhibit D to her Affidavit, 1-2.*

Bill never denied paternity and maintained regular contact with Angela. *CRR, Doc. 20, Aff. Conway ¶¶ 3-5, 8.* In approximately 1994 Angela's mom lost her health insurance, Bill took care of the necessary paperwork so that Angela could receive medical care at the Indian Health Service in Browning. *CRR, Doc. 20, Aff. Conway ¶ 3.* Bill also assisted Angela in completing a family tree as part of a high school project. The family tree shows Bill as Angela's father and his ancestors as her ancestors on his side of the family tree. *CRR, Doc. 20, Aff. Conway ¶ 4, referencing Exhibit B.* Bill made a point to see Angela at important times in her life such as prom and high school graduation. *Attached Exhibit D, Prom Picture; CRR, Doc. 20, Aff. Conway ¶ 8; CRR, Doc. 21, Aff. Wyrick, Attached Sworn Statement.*

Bill died on July 26, 2003. *CRR, Doc. 19, Personal Representative's Brief in Support of Objection to Petition and Motion to Dismiss, 1 (Jan. 17, 2007).* His estate included both fee and trust land within the exterior boundaries of the Blackfeet Indian Reservation ("Reservation"). *CRR, Doc. 11, Inventory and Appraisement, 2 (March 10, 2006); CRR, Doc. 20, Aff. Conway, Exhibit E.* Bill was an enrolled member of the Blackfeet Tribe ("Tribe"), and at the time of his death he resided on the Reservation. *CRR, Doc. 85, Order Denying Motion to Dismiss for Lack of Subject Matter Jurisdiction, 2 (Feb. 1, 2010).* The trust property was distributed in a Bureau of Indian Affairs proceeding, which all heirs participated in. *CRR, Doc. 20, Aff. Conway, Exhibit E, ¶ 4.* The final disposition of the **trust** property is not at issue here. Bill's **fee** property consists of approximately 1,400 acres of land on the eastern edge of Glacier National Park and 2 residential lots with a home in East Glacier. *CRR, Doc. 11, Inventory and Appraisement, 2.*

PROCEDURAL HISTORY

Georgia initiated probate proceedings in the Ninth Judicial District Court of Glacier County on September 29, 2004, by filing her application for informal appointment of personal representative in intestacy. In her application, Georgia

pointedly omitted Angela as Bill's daughter and fraudulently listed Willie and Julie as Bill's sole heirs. *CRR, Doc. 3, Application for Informal Appointment of Personal Representative in Intestacy, ¶¶ 3, 5 (Sept. 29, 2004).*

Bill's three children have equal priority to serve as Personal Representative of his estate pursuant to Mont. Code Ann. § 72-3-502 (2009). In total disregard of Angela's equal priority and without her knowledge, Willie and Julie renounced their right to serve as Personal Representative and nominated their mother Georgia. *CRR, Doc. 3, Application for Informal Appointment of Personal Representative in Intestacy, ¶ 5.* Angela never renounced her right or nominated anyone to serve as Personal Representative. Angela received no notice of the Glacier County proceeding and did not discover the state court probate until the Spring of 2006. *CRR, Doc. 20, Aff. Conway ¶ 7.*

Georgia assumed management of the estate in early 2006. She then sold the entirety of the fee property, approximately 1,400 acres, 2 lots and the home on the edge of Glacier National Park to Doug Eckerson ("Eckerson"), her ex-husband, for the outrageous amount of $20,000. *CRR, Doc. 11, Inventory and Appraisement, 2; CRR, Doc. 61, Doug Eckerson's Claim Against Estate, Exhibit A; Attached Exhibit E, Affidavit of Julie Big Spring Keenan ¶ 8 (June 22, 2007); Attached Exhibit F, Affidavit of Willie Big Spring III ¶ 8 (June 25, 2007); Attached Exhibit G,*

Respondent's Answer to Petitioners' Requests for Admission No. 12, 5 (Oct. 30, 2007). That price per acre equals a mere $15.38. On March 10, 2006, Georgia filed an inventory and appraisement indicating that the sole asset of the estate was the fee land, which she egregiously claimed was valued at the sale price, $20,000. *CRR, Doc. 11, Inventory and Appraisement, 2.*

In late May 2006, Georgia issued two checks from the estate's trust account in the amount of $10,000 each to Willie and Julie, which represented their respective shares of the proceeds from the sale of the land and the entirety of their Father's estate. *CRR, Doc. 14, Final Account, 3 (June 1, 2006).* Once the property was out of Bill's Estate, Doug began deeding the property to Willie and Julie parcel by parcel, keeping some, and deeding some to his son Jacob. *Attached Exhibit H, Ownership Report (Oct. 27, 2007); Attached Exhibit I, Summary of Ownership Report Prepared by Counsel, 1-3; CRR, Doc. 61, Doug Eckerson's Claim Against Estate, 2 (Jan. 28, 2008); Appellee Doug Eckerson's Brief on Appeal, 5 (June 23, 2010).* Georgia filed a Final Accounting and a Personal Representative's Sworn Statement to Close the Estate in June of 2006, again without notice to Angela. *CRR, Doc. 15, Personal Representative's Sworn Statement to Close Estate, 1-2 (June 1, 2006); CRR, Doc. 14, Final Account, 1-3.*

At no time was Angela notified about the Glacier County probate action or

aforementioned transactions. *CRR, Doc. 20, Aff. Conway* ¶ 7. Only through her own due diligence did she become aware of the proceedings and on December 1, 2006, she and Kathleen R. Big Spring (Bill's mother) filed their Petition for Formal Determination of Testacy and Heirs and Supervised Administration of the Estate. The Petition sought to set aside any and all transactions. *CRR, Doc. 16, Petition for Determination of Testacy and Heirs, For Supervised Administration, For Order of Complete Settlement of Estate, and For Other Appropriate Relief (Dec. 1, 2006).* Angela also filed a Notice of Lis Pendens against all fee property purchased by Eckerson. *Attached Exhibit J, Notice of Lis Pendens (Dec. 1, 2006).* Georgia, Willie and Julie's strategy was to challenge Angela's right to assert that Bill was her father under the family law code. *CRR, Doc. 19, Brief in Support of Objection to Petition and Motion to Dismiss, 6-9 (Jan. 17, 2007).* After several hearings, Kathleen voluntarily withdrew her Petition. *CRR, Doc. 56, Order Dismissing Petition for Determination of Testacy and Heirs, For Supervised Administration, For Order of Complete Settlement of Estate, and For Other Appropriate Relief, 1 (November 30, 2007).* Following court-ordered DNA testing, Angela was conclusively determined to be Bill's natural child. *Attached Exhibit B , Genetic Test Report.*

During the pendency of Angela's Petition, a title search revealed that Julie

owned 540 acres, Willie owned 641.78 acres, Eckerson owned 167.98 acres and a Jacob Eckerson owned 58.54 acres. *Attached Exhibit H, Ownership Report and Attached Exhibit I, Summary of Ownership Report Prepared by Counsel, 1-3.* Georgia, as personal representative, in response to discovery requests, admitted that the property was sold for less than fair market value. She continued: "However, Douglas M. Eckerson has deeded back this property to the children. This was a family transaction in which both adult children of William F. Big Spring, Jr., approved the sale to their stepfather and expected to receive benefit from the sale in excess of the sales price." *Attached Exhibit G, Respondent's Answer to Petitioners' Request for Admission No. 12.* The benefit Willie and Julie expected to receive was to deprive Angela of her rightful share of her father's estate.

It became clear that Bill's other adult child, Angela, did not approve of this "family transaction." A mediation took place on April 25, 2008, which Angela, Willie, Georgia, and Eckerson personally attended, with Julie being consulted telephonically. An agreement was reached requiring the parties to return all land to the estate. The land was then apportioned between Angela, Willie and Julie. Willie signed the Agreement for his sister Julie at her direction. *CRR, Doc. 75, Doug Eckerson's Motion To Lift Lis Pendens, 2-3, referencing Exhibit A, 1-2 (Sept. 16, 2009).* Apparently, Willie, Julie, and Doug reached an agreement

regarding his claim against the estate. Angela was not a party to the agreement, and does not have any knowledge of the apparent agreement. *CRR, Doc. 80, Response of Doug Eckerson to Julie Big Spring and William Big Spring III's Motion to Dismiss for Lack of Subject Matter Jurisdiction, Exhibit C, 1-2 (Nov. 9, 2009).*

No action was ever taken by Georgia as Personal Representative to complete either settlement agreement. *CRR, Doc. 75, Doug Eckerson's Motion to Lift Lis Pendens, 3.* Throughout this proceeding, Willie and Julie did not have independent representation, instead relying on their mother, Georgia. *Appellants' Brief on Appeal, 8.* On October 23, 2009, Willie and Julie hired independent counsel to file a Motion to Dismiss for Lack of Subject Matter Jurisdiction by the Ninth Judicial District Court. *CRR, Doc. 79, Heirs Julie Big Spring and William Big Spring III Motion to Dismiss for Lack of Subject Matter Jurisdiction (Oct. 26, 2009).* Georgia has effectively abandoned the position of personal representative, not responding to notices or demands for her to complete the administration of the estate. *CRR, Doc. 70, Motion for Leave to Withdraw as Counsel, 1-2 (May 14, 2009).*

Julie and Willie were aware of all the proceedings through the entire process. They initiated the proceeding by nominating their mother, Georgia, to serve as personal representative. *CRR, Doc. 3, Application for Informal Appointment of*

Personal Representative in Intestacy, ¶ *5.* They accepted distributions from the estate and filed affidavits claiming knowledge and approval of Georgia's actions. *Attached Exhibit E, Aff. Keenan* ¶ *7; Attached Exhibit F, Aff. Big Spring III* ¶ *7.* At no other time in the 5 years of this proceeding have they objected to state court jurisdiction; rather they invoked it. They were also aware of Georgia's omission of Angela as a rightful heir to the estate, and again did not offer any objection. Only after they were unable to probate the estate without Angela's knowledge, and became dissatisfied with their deal with Doug, did they file the motion to remove to Tribal Court. The parties are now before this Court on Willie and Julie's appeal from the Ninth Judicial District Court's decision denying their Motion to Dismiss for Lack of Subject Matter Jurisdiction. *CRR, Doc. 85, Order Denying Motion To Dismiss for Lack of Subject Matter Jurisdiction.*

STANDARD OF REVIEW

The Montana Supreme Court reviews *de novo* a state district court's determination of subject matter jurisdiction. "A district court's determination [of] subject matter jurisdiction is a conclusion of law which we review to ascertain whether the court's interpretation of the law is correct." *Zempel v. Liberty*, 2006 MT 220, ¶ 11, 333 Mont. 417, 143 P.3d 123, citing *General Constructors, Inc. v. Chewculator, Inc.*, 2001 MT 54, ¶ 16, 304 Mont. 319, 21 P.3d 604. "The motion

should not be granted unless it appears beyond a doubt that the non-moving party can prove no set of facts in support of its claim which would entitle it to relief." *General Constructors, Inc.* ¶ 3, citing *Stenstrom v. State*, 280 Mont. 321, 325, 930 P.2d 650, 652 (1996).

SUMMARY OF ARGUMENT

Subject matter jurisdiction in this case will be determined by the following three-part test: "(1) whether the federal treaties and statutes applicable have preempted state jurisdiction; (2) whether the exercise of state jurisdiction would interfere with reservation self-government; and (3) whether the Tribal Court is currently exercising jurisdiction in such a manner as to preempt state jurisdiction." *Iron Bear v. District Court*, 162 Mont. 335, 346, 512 P.2d 1292, 1299 (1973). Here, there is no federal preemption of state jurisdiction, there is no interference with tribal self-government, and the tribal court is not exercising jurisdiction. Furthermore, under the *Montana* test, state court has concurrent jurisdiction because Angela is not an enrolled member and does not live on the Reservation.

For Willie and Julie to succeed with this appeal, they must show that tribal court jurisdiction of probate of fee land within the reservation is **exclusive**. Federal, state, and tribal statutes clearly confer less than exclusive jurisdiction, and at best concurrent, jurisdiction.

ARGUMENT

I. Application of the three *Iron Bear* factors confers subject matter jurisdiction over Bill's probate in the Ninth Judicial District Court, Glacier County.

Iron Bear is the correct test, District Court Judge, Hon. Laurie McKinnon applied the facts correctly, and reached the correct result. This argument will address each factor in turn.

A. Applicable federal treaties and statutes have not preempted state jurisdiction.

There are no federal treaties or statutes applicable which have preempted state jurisdiction. Instead, federal policy regarding Indian probates is outlined in 25 C.F.R. § 15.10 (2010), which states that the Secretary "will probate **only the trust or restricted land** or trust personalty in an estate," further stating that "we will not probate...real or personal property **other than trust or restricted land** or trust personalty in an estate of a decedent." 25 C.F.R. § 15.10(b)(1) (emphasis added). In this case, trust land was probated through the BIA, a clear example of federal preemption. The subject of this appeal however, is the probate of fee land.

Willie and Julie cite to the Indian Civil Rights Act, 25 U.S.C. § 1326 (2007)

and Public Law 83-280 (1968) and suggest that they serve as blanket federal preemption of state court jurisdiction unless and until Montana's Constitution is amended and Blackfeet Tribe conducts a referendum on state assumption of jurisdiction. *Appellants' Brief on Appeal,* 19-20. This contention is incorrect and was squarely addressed in *Iron Bear.* The Montana Supreme Court recognized that existing civil jurisdiction remained following the Indian Civil Rights Act and Public Law 83-280 so long as the exercise of jurisdiction did not run afoul of the test proscribed in *Williams v. Lee*, 358 U.S. 217 (1957). *Iron Bear*, 162 Mont. at 341-3, 512 P.2d at 1297. Nothing in the Indian Civil Rights Act or Public Law 280 suggest that their application shall be applied retroactively. Indian Civil Rights Act, 25 U.S.C. § 1326; Public Law 83-280.

B. The exercise of state jurisdiction does not interfere with tribal self-government.

The purpose of a probate is to administer and distribute the property of a decedent. Probates, therefore, are inherently *in rem* proceedings, rather than *in personem.* Pursuant to Mont. Code Ann. § 72-1-202 (2009), the courts have subject matter jurisdiction over "estates of decedents, including construction of wills and determination of heirs and successors of decedents, and estates of protected persons." Because jurisdiction is assumed over the estate, and not over

the decedent, it follows that matters of probate are *in rem* proceedings concerning property, not persons. Similarly, the Court in *Estate of Ducy*, 241 Mont. 419, 422, 787 P.2d 749, 750-51 (1990), held that the fact a decedent was domiciled in the state, and a probate was proceeding in the state, did not give the court jurisdiction to issue orders regarding out-of-state property. *In rem* jurisdiction is based on the property, not the decedent; therefore, the law regarding interference with tribal self-government as to fee land is applicable.

As this is an *in rem* proceeding regarding fee land on the reservation, whether state court jurisdiction would interfere with reservation self government must be answered by reviewing case law regarding jurisdiction over fee land. The most recent case on this issue is *Plains Commerce Bank v. Long Family Land and Cattle Company, Inc.*, 128 S. Ct. 2709 (2008). In *Plains Commerce*, the Court stated "our cases have made clear that once tribal land is converted into fee simple, the tribe loses plenary jurisdiction over it." *Id. at* 2719, citing *County of Yakima v. Confederated Tribes and Bands of Yakima Nation,* 502 U.S. 251, 267-68 (1992). "As a general rule, 'the tribe has no authority itself, by way of tribal ordinance or actions in the tribal courts, to regulate the use of fee land." *Plains Commerce*, 128 S. Ct. at 2719, citing *South Dakota v. Bourland*, 508 U.S. 679, 689 (1993); *Brendale v. Confederated Tribes and Bands of Yakima Nation*, 492 U.S. 408, 430

(1989).

Bill's fee land is not subject to the tribe's plenary jurisdiction. Willie and Julie point out that there is nothing that prevents tribal court jurisdiction over fee land on the reservation and that the tribal court could accomplish the same function as state court. *Appellants' Brief on Appeal,* 31. Assuming arguendo that they are correct, the core holding of *Plains Commerce* is equally clear that state court jurisdiction over fee lands does not "interfere with reservation self-government" as contemplated in *Iron Bear* at 346, 512 P.2d at 1297. Furthermore, the fact remains that Willie and Julie renounced their right to serve and appointed their mother as personal representative of Bill's estate in state court. They chose the forum.

Willy and Julie also contend that Indian owned fee land is equivalent to Indian Country as defined in 18 U.S.C. § 1151 (2008). This definition, however, applies only to criminal matters. Opposing counsel is correct in his assertion that this definition has been applied previously in civil matters. *Appellants' Brief on Appeal*, 16, citing *Decoteau v. District County Court*, 420 U.S. 425, 427 n. 2 (1975). As evidenced by the court's rejection of this definition in *Strate v. A-1 Contractors*, 520 U.S. 438, 454, fn. 9 (1997) the definition of "Indian Country" has not been uniformly applied in all civil matters.

The Montana Supreme Court has stated that Indian persons "use the courts of this State for many things–divorces, contracts, torts, inheritance, and the entire spectrum of legal matters" and are "entitled to do so." *Iron Bear,* at 339, 512 P.2d at 1295, citing *Bonnet v. Seekins*, 126 Mont. 24, 243 P.2d 317 (1952). "For Montana to deny ... reservation Indians the use of its state courts...would amount to a denial of equal protection of the laws to our citizens." *Iron Bear*, 162 Mont. at 347, 512 P.2d at 1299.

Angela is not an enrolled member of the Blackfeet Tribe and neither Angela nor Julie are residents of the Reservation and thus, this is not solely a matter of controlling internal relations of the Tribe. As the concurring Justices in *Skillen* note, when determining whether there is infringement of tribal self-government, if the tribal member no longer resides on the reservation, the State acquires an interest and it is no longer exclusively a "reservation matter." *Marriage of Skillen,* 1998 MT 43, ¶ 78, 287 Mont. 399, 956 P.3d 1 (Turnage, C.J., and Regnier, Leaphart and Hunt, JJ. concurring), citing *Mescalero Apache Tribe v. Jones*, 411 U.S. 145 (1973). The concurring opinion further stated, "Indians who reside off the reservation, as a general rule have the same rights and responsibilities and are subject to the jurisdiction of state courts in the same manner as state citizens." *Skillen* ¶ 78 (Turnage, C.J., and Regnier, Leaphart and Hunt, JJ. concurring), citing

Harris v. Young, 473 N.W.2d 141, 145 (S.D. 1991). The concurring opinion then noted, "[I]n a subsequent case, the court explained that under this concurrent jurisdiction, the court which first obtained valid personal jurisdiction over the parties could adjudicate the case. *Skillen* ¶ 79 (Turnage, C.J., and Regnier, Leaphart and Hunt, JJ. concurring), citing *Harris*, 473 N.W.2d at 145.

In this case, the state court first obtained personal jurisdiction over the parties when Willie and Julie voluntarily invoked the subject matter jurisdiction of the state court by filing the Petition. Access to Montana state courts does not interfere with reservation self government; rather, it a valuable constitutional right.

C. The tribal court is not exercising jurisdiction in such a manner as to preempt state jurisdiction.

To our knowledge, having not received service of process, no probate has been filed in Tribal Court regarding Bill's estate, nor has the Tribe asserted that they have exclusive jurisdiction over the Estate of William F. Big Spring, Jr.

Further, the Tribe has not asserted that it generally has exclusive jurisdiction in probate matters; in fact, the opposite is true as they grant concurrent jurisdiction to the State by Tribal statute. Blackfeet Law & Order Code, Chapter 2, § 1 (1967) (as amended) states:

> The Tribal Court **and** the State shall have concurrent and not exclusive jurisdiction of all suits wherein the defendant is a member of the Tribe which is brought before the Courts. (Emphasis added)

Willie and Julie must show that tribal court jurisdiction is exclusive to succeed in this appeal. The above tribal statute clearly states that tribal court jurisdiction is concurrent at best. Furthermore, Willie and Julie point to no set of statutes, rules, guidelines, or any authority as to how a probate would be governed in tribal court. In fact, Willie and Julie acknowledge that the "Tribe does not yet have a probate code." *Appellants' Brief on Appeal*, 25.

This shows that the Tribe has not exercised jurisdiction in a manner which would suggest that state jurisdiction is preempted. It cannot be said that the state's assumption of jurisdiction works to exclude the Tribal Court, as they have not attempted to assume jurisdiction.

Furthermore, the Tribe is free to amend their laws to provide the Tribal Court with exclusive jurisdictional authority and guidance in determining probate matters. Not having done so, it cannot be said that the state has overstepped its bounds. Furthermore, even if it were to enact a probate code and assert jurisdiction in some fashion, this probate would fall under the laws that existed at the time of his death in 2003.

Willie and Julie also cite to the American Indian Probate Reform Act 25 U.S.C.§ 2201 *et seq.* (2007) ("AIPRA") as evidence of tribal preemption. *Appellants' Brief on Appeal*, 25, citing Blackfeet Law & Order Code, Chapter 2, §

2 (1967) (as amended). This argument is not valid for two reasons: 1) AIPRA only applies to trust and restricted land; and, 2) AIPRA only applies to deaths occurring after October 27, 2004. 25 U.S.C. § 2201(2)(A). Furthermore, AIPRA does not vest Indian tribes "with any authority which is not authorized by the constitution and by-laws or other organizational documents of such tribe[s]." 25 U.S.C. § 2211 (2007). AIPRA merely represents a strong policy for tribal court assumption of jurisdiction by prescribing rules of inheritance of **trust or restricted lands**, but not of **fee** lands. As explained above, the only asset in the probate is fee land and Bill died before AIPRA became the law of the land, and thus, it has no application to this matter in either Tribal or state court.

The tribe is not exercising jurisdiction in this case at this time, and jurisdiction of probate matters is at best concurrent with the state. In this case, Willie and Julie chose the forum.

II. The *Montana* Test limits the Tribal Court's jurisdiction over Angela, a nonmember.

The U.S. Supreme Court has limited tribal court jurisdiction over non-members. Angela, as a non-member, is not subject to tribal court jurisdiction under the test outlined in *Montana v. United States,* 450 U.S. 544 (1981). The *Montana* test states "the inherent sovereign powers of an Indian tribe do not extend to the activities of nonmembers of the tribe." *Id.* at 565. The only exception applicable to

the *Montana* test is, "A tribe may also retain inherent power to exercise civil authority over the conduct of non-Indians on fee lands within its reservations when that conduct threatens or has some direct effect on the political integrity, the economic security, or the health or welfare of the tribe." *Id.* at 566.

The Court clarified the *Montana* framework in *Nevada v. Hicks*, 533 U.S. 353, 359-60, 381 (2001), stating that "*Montana* 'announced the general rule of no jurisdiction over nonmembers' and 'clearly implied that the general rule of *Montana* applies to both Indian and non-Indian land.' The ownership status of land...is only one factor to consider in determining whether regulation of the activities of nonmembers is 'necessary to protect tribal self-government or to control internal relations.'" *Zempel*, 2006 MT 220, ¶ 24.

In the instant matter, the state's assumption of jurisdiction will not interfere with the political integrity of the Tribe; rather, it will bolster it by recognizing the validity of Tribal law, namely concurrent jurisdiction of probate matters. Further, the economic security of the Tribe is not implicated when freely alienable fee land passes to heirs. Likewise, the health or welfare of the Tribe is affected by the State's assumption of jurisdiction of this matter.

What would be put into question, however, is the many estates of tribal members other than Bill who have been handled by a state district court. In each of

those cases, transfers made and recorded in the Clerk and Recorders office would be challenged by numerous actions in tribal court. These actions could potentially invalidate transfers made in the district court and throw the system, which all holders of fee land rely, into chaos.

CONCLUSION

In *Estate of Standing Bear* the Court stated:

> [W]hen Leota [personal representative of the estate and tribal member] applied to the District Court to be the personal representative of decedent's estate, she elected to be governed by the laws of Montana. She cannot retreat to the reservation, dispose of property contrary to state laws and be afforded protection of the Tribal Court to deny the state court of its jurisdiction to enforce its rulings. Such an action would make a sham of probate proceedings.

Estate of Standing Bear v. Belcourt, 193 Mont. 174, 181, 631 P.2d 285, 289 (1981). Although *Standing Bear* was decided on other grounds, the Court (and Tribal Court) conceded that the district court's determination that it had proper concurrent jurisdiction over the probate proceeding was not in question and impliedly valid. *Id.* at 180-81, 631 P.2d at 289.

Similarly, Julie and Willie instituted this action in state court when they relinquished their priority to serve as personal representatives and nominated Georgia, their mother, to act as personal representative. Julie and Willie were aware of the proceedings in state court throughout the entire process, including the

filing of the Personal Representative's Sworn Statement to Close. Traditional notions of fair play and justice should guide this Court in its determination on this point.

The Ninth Judicial District Court has subject matter jurisdiction over the probate of the Estate of William Big Spring, Jr. The District Court's rightful assumption of jurisdiction in this matter must be upheld. The matter should remain in State court for a final determination of the probate, saving all concerned parties valuable time and expense.

DATED this 8th day of July, 2010.

Burt N. Hurwitz, Esq.
Attorney for Appellee Conway

CERTIFICATE OF SERVICE

I, BURT N. HURWITZ, hereby certify that the foregoing was duly served upon the respective attorneys for each of the parties entitled to service by depositing a copy in the United States mail, postage prepaid, addressed to each at the last known address as shown on this page on the 8th day of July, 2010.

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BURT N. HURWITZ

CERTIFICATE OF COMPLIANCE

Pursuant to Rule 27, M.R.Civ.P., I hereby certify that the foregoing Appellee's Brief meets the requirements in Rule 27 as follows:

1. Line spacing	Double-spaced
2. Typeface	Times New Roman, Proportionally spaced, 14 Point
3. Word count	4,785 - Does not exceed 10,000 word limit Excludes Certificate of Mailing and Certificate of Compliance - Word Perfect 12.0

DATED this 8th day of July, 2010.

CHURCH, HARRIS, JOHNSON & WILLIAMS, P.C.

By: _____
BURT N. HURWITZ